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50 *Attorneys for Epic Games, Inc.*

51 **UNITED STATES DISTRICT COURT**
52
53 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
54
55 **OAKLAND DIVISION**

56 IN RE APPLE iPHONE ANTITRUST LITIGATION) Case No. 4:11-cv-06714-YGR
57)
58) STIPULATED [PROPOSED]
59) SUPPLEMENTAL PROTECTIVE ORDER
60) GOVERNING DISCOVERY FROM GLU
61) MOBILE INC.
62)
63) Hon. Yvonne Gonzalez Rogers
64) Hon. Thomas S. Hixson

65 _____
66 [caption continued on next page]

1 DONALD R. CAMERON, et al.,) Case No. 4:19-cv-03074-YGR
2)
3 Plaintiffs,)
4)
5 v.)
6)
7 Defendant.)
8 EPIC GAMES, INC., et al.,) Case No. 4:20-cv-05640-YGR
9)
10 Plaintiff, Counter-defendant,)
11)
12 v.)
13)
14 APPLE INC.,)
15)
16 Defendant, Counterclaimant.)
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1 WHEREAS the parties to *In re Apple iPhone Antitrust Litigation* and *Cameron v. Apple Inc.*
2 agreed to a Stipulated Protective Order on January 6, 2020 (Case No. 4:11-cv-06714-YGR, Dkt. No.
3 195; Case No. 4:19-cv-03074-YGR, Dkt. No. 81);

4 WHEREAS the Court entered the Stipulated Protective Order on January 9, 2020 (Case No.
5 4:11-cv-06714-YGR, Dkt. No. 199; Case No. 4:19-cv-03074-YGR, Dkt. No. 85) (the “Protective
6 Order”);

7 WHEREAS, parties to *Epic Games, Inc. v. Apple Inc.* agreed that the terms of the Stipulated
8 Protective Order in *Cameron v. Apple Inc.* and *In re Apple iPhone Antitrust Litigation* should also
9 apply in *Epic Games, Inc. v. Apple Inc.* (Case No. 4:20-cv-05640, Dkt. No. 110) (collectively, the
10 “Litigations”), and the Court entered a stipulated protective order in *Epic Games, Inc. v. Apple Inc.*
11 on October 2, 2020 with identical terms (Case No. 4:20-cv-05640, Dkt. No. 112);

12 WHEREAS Paragraph 10(a) of the Protective Order states that “[t]he terms of this Order are
13 applicable to information produced by a Non-Party in this action” and that “[n]othing in these
14 provisions should be construed as prohibiting a Non-Party from seeking additional protections”;

15 WHEREAS Parties to the Litigations have served subpoenas on Glu Mobile Inc. (“Glu
16 Mobile”)¹;

17 WHEREAS Glu Mobile is willing to produce competitively sensitive information in
18 response to subpoenas served on it in these Litigations, subject to certain additional protections
19 beyond those set forth in the Protective Order and that the Parties to the Litigations agree to;

20 WHEREFORE, IT IS HEREBY ORDERED that documents produced by Glu Mobile in
21 connection with the Litigations shall be further subject to the following provisions (the
22 “Supplemental Protective Order”):

23 **A. GENERAL PROVISIONS**

24 1. The definitions, terms and provisions contained in the Protective Order shall be
25 incorporated herein by reference as though fully set forth herein; provided, however, that in the

26 ¹ The term “Glu Mobile” shall include any entity that responds to subpoenas served on Glu Mobile
27 Inc. (including any successor or acquiror of Glu Mobile Inc.) in the Litigations. References to
28 “competitors” within this Supplemental Protective Order shall be interpreted to mean competitors
of Glu Mobile Inc. and its parents and subsidiaries.

1 event of a conflict between any definition, term or provision of this Supplemental Protective Order
2 and any definition, term or provision of the Protective Order, this Supplemental Protective Order
3 will control with respect to such conflict.

4 2. The definitions, terms and provisions contained in this Supplemental Protective
5 Order shall apply only to those Discovery Materials produced by Glu Mobile, and nothing herein
6 shall provide any rights or protections to the Parties to the Litigations beyond those set forth in the
7 Protective Order.

8 **B. ADDITIONAL DEFINITIONS**

9 1. Business Consultant: a consultant advising on or involved in competitive decision-
10 making.

11 2. Party Expert: with respect to “GLU MOBILE HIGHLY CONFIDENTIAL –
12 OUTSIDE COUNSEL EYES ONLY”, a person with specialized knowledge or experience in a
13 matter pertinent to the Litigations who: (1) has been retained by a Party or its counsel to serve as
14 an expert witness or as a consultant in this action; (2) is not a current employee or current Business
15 Consultant of a Party, Glu Mobile, or of any Glu Mobile competitor, or otherwise currently involved
16 in competitive decision-making for a Party, Glu Mobile, or for any Glu Mobile competitor; (3) has
17 not, within the 12 months preceding the entry of this Protective Order, been an employee or Business
18 Consultant of a Party, Glu Mobile, or Glu Mobile’s competitor, or otherwise been involved in
19 competitive decision-making for a Party, Glu Mobile, or Glu Mobile’s competitor; and (4) at the
20 time of retention, is not anticipated to become an employee or Business Consultant of a Party, Glu
21 Mobile, or of any Glu Mobile competitor, or to be otherwise involved in competitive decision-
22 making for a Party or for any Glu Mobile competitor. If, while this action is pending, a Party learns
23 that any of its retained experts or consultants as defined herein is anticipating to become, or has
24 become, an employee or Business Consultant of Glu Mobile or any Glu Mobile competitor, or
25 otherwise involved in competitive decision-making for Glu Mobile or any Glu Mobile competitor,
26 the Party learning such information shall promptly disclose the information to Glu Mobile.

27 3. “GLU MOBILE HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES
28 ONLY” Information or Items: extremely sensitive “Confidential Information or Items” produced

1 by Glu Mobile and that contain algorithms and source code; non-public, commercially sensitive
 2 customer lists or communications; non-public financial, marketing, or strategic business planning
 3 information; current or future non-public information regarding prices, costs, margins, or other
 4 financial metrics; information relating to research, development, testing of, or plans for existing or
 5 proposed future products; non-public information concerning Glu Mobile's data protection practices
 6 and security protocols; evaluation of the strengths and vulnerabilities of Glu Mobile's product
 7 offerings, including non-public pricing and cost information; confidential contractual terms,
 8 proposed contractual terms, or negotiating positions (including internal deliberations about
 9 negotiating positions) taken with respect to Glu Mobile or competitors to Glu Mobile; information
 10 relating to pending or abandoned patent applications that have not been made available to the public;
 11 confidential submissions to governmental entities describing Glu Mobile's legal positions or
 12 theories; personnel files; sensitive personally identifiable information; and communications that
 13 disclose any such information, disclosure of which to a Party or another Non-Party would create a
 14 substantial risk of serious harm that could not be avoided by less restrictive means.

15 **C. ADDITIONAL PROTECTIONS FOR ACCESS TO AND USE OF GLU MOBILE**
 16 **PROTECTED MATERIALS**

17 1. Manner of Designating “GLU MOBILE HIGHLY CONFIDENTIAL – OUTSIDE
 18 COUNSEL EYES ONLY” Information or Items. Designation in conformity with this Supplemental
 19 Protective Order requires:

20 a. for information in documentary form (e.g., paper or electronic documents,
 21 but excluding transcripts of depositions or other pretrial or trial proceedings), that Glu Mobile affix
 22 the legend “GLU MOBILE HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY”
 23 to each page of any document for which Glu Mobile seeks protection under this Supplemental
 24 Protective Order. If only a portion or portions of the material on a page qualifies for protection, Glu
 25 Mobile also must clearly identify the protected portion(s) (e.g., by making appropriate markings in
 26 the margins).

27 If Glu Mobile makes original documents or materials available for inspection, it need
 28 not designate them for protection until after the inspecting Party has indicated which material it

1 would like copied and produced. During the inspection and before the designation, all of the
 2 material made available for inspection shall be deemed “GLU MOBILE HIGHLY
 3 CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY.” After the inspecting Party has
 4 identified the documents it wants copied and produced, Glu Mobile must determine which
 5 documents, or portions thereof, qualify for protection under this Supplemental Protective Order.
 6 Then, before producing the specified documents, Glu Mobile must affix the appropriate legend
 7 (“GLU MOBILE HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY”) to each
 8 page that contains such material. If only a portion or portions of the material on a page qualifies for
 9 protection, Glu Mobile also must clearly identify the protected portion(s) (e.g., by making
 10 appropriate markings in the margins).

11 b. for testimony given in deposition or in other pretrial proceedings not
 12 involving the Court, that Glu Mobile identify on the record, before the close of the deposition,
 13 hearing, or other proceeding, all protected testimony. When it is impractical to identify separately
 14 each portion of testimony that is entitled to protection and it appears that substantial portions of the
 15 testimony may qualify for protection, Glu Mobile may invoke on the record (before the deposition,
 16 hearing, or other proceeding is concluded) a right to have up to 21 days to identify the specific
 17 portions of the testimony as to which protection is sought. Only those portions of the testimony that
 18 are appropriately designated for protection within the 21 days shall be covered by the provisions of
 19 this Supplemental Protective Order. Alternatively, Glu Mobile may specify, at the deposition or up
 20 to 21 days afterwards if that period is properly invoked, that the entire transcript shall be treated as
 21 “GLU MOBILE HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY.” With
 22 respect to trial, Glu Mobile can petition the Court for appropriate protective measures which shall
 23 be requested in advance of evidence being taken.

24 Glu Mobile and the Parties shall give the other parties notice if they reasonably
 25 expect a deposition, hearing, or other proceeding to include “GLU MOBILE HIGHLY
CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY” Information or Items so that the other
 26 parties can ensure that only authorized individuals who have signed the “Acknowledgment and
 27 Agreement to Be Bound” (Exhibit A) are present at those proceedings. The use of a document as
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1 an exhibit at a deposition shall not in any way affect its designation as "GLU MOBILE HIGHLY
2 CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY."

3 Transcripts containing "GLU MOBILE HIGHLY CONFIDENTIAL – OUTSIDE
4 COUNSEL EYES ONLY" Information or Items shall have an obvious legend on the title page that
5 the transcript contains such material, and the title page shall be followed by a list of all pages
6 (including line numbers as appropriate) that have been designated as "GLU MOBILE HIGHLY
7 CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY". Glu Mobile shall inform the Court
8 reporter of these requirements. Any transcript that is prepared before the expiration of a 21-day
9 period for designation shall be treated during that period as if it had been designated "GLU MOBILE
10 HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY" in its entirety unless otherwise
11 agreed. After the expiration of that period, the transcript shall be treated only as actually designated.

12 c. for information produced in some form other than documentary and for any
13 other tangible items, that Glu Mobile affix in a prominent place on the exterior of the container or
14 containers in which the information or item is stored the legend "GLU MOBILE HIGHLY
15 CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY." If only a portion or portions of the
16 information or item warrant protection, Glu Mobile, to the extent practicable, shall identify the
17 protected portion(s).

18 2. Disclosure of "GLU MOBILE HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL
19 EYES ONLY" Information or Items. Unless otherwise ordered by the Court or permitted in writing
20 by Glu Mobile, a Party may disclose any information or item designated "GLU MOBILE HIGHLY
21 CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY" only to:

22 a. the Party's Outside Counsel of Record in this action, as well as employees of
23 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for
24 these Litigations and who have signed the "Acknowledgement and Agreement to be Bound" that is
25 attached to the Protective Order as Exhibit A;

26 b. Designated House Counsel of the Party, but only in the event that (i)
27 information designated "GLU MOBILE HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL
28 EYES ONLY" is incorporated into and necessary to a Party's work product that is to be filed or

1 served in these Litigations; (ii) the Party discloses to Glu Mobile the relevant excerpts from the work
2 product that include the information designated “GLU MOBILE HIGHLY CONFIDENTIAL –
3 OUTSIDE COUNSEL EYES ONLY” prior to disclosure to Designated House Counsel of the Party;
4 (iii) the Party identifies by name and job title the Designated House Counsel with whom such work
5 product will be shared for the purpose of reviewing and approving the work product in advance of
6 filing or service; and (iv) Glu Mobile provides consent to the disclosure, which shall not
7 unreasonably be withheld;

8 c. Party Experts (as defined in this Supplemental Protective Order) (1) to whom
9 disclosure is reasonably necessary for these Litigations and (2) who have signed the
10 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

11 d. the Court and its personnel;

12 e. court reporters and their staff, professional jury or trial consultants, and
13 Professional Vendors to whom disclosure is reasonably necessary for these Litigations and who
14 have signed the “Acknowledgment and Agreement to be Bound” (Exhibit A); and

15 f. the author or recipient of a document containing the information.

16 3. All other provisions of the Protective Order, including Paragraphs 2, 3, 4, 5.3, 6, 7.1,
17 9, 10, 11, 12, 13, and 14 apply mutatis mutandis to information designated “GLU MOBILE
18 HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY” to the same extent as they
19 apply to information designated as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”;
20 except that the provision in Paragraph 3 of the Protective Order providing that any use of Protected
21 Material at trial shall be governed by a separate agreement or order shall not apply to information
22 designated “GLU MOBILE HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY”.
23 Unless otherwise ordered by the Court or expressly permitted by Glu Mobile, no Party seeking to
24 introduce documents or information designated “GLU MOBILE HIGHLY CONFIDENTIAL –
25 OUTSIDE COUNSEL EYES ONLY” into the record at trial may disclose the materials to any
26 persons other than those identified in Paragraph C.2. of this Supplemental Protective Order.

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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: May 17, 2021 By:

/s/ John I. Karin

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25 *Developer Plaintiffs' Interim Class Counsel*

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.
2
3 DATED: _____
4 HON. YVONNE GONZALEZ ROGERS
5 United States District Court Judge
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1 **DECLARATION REGARDING CONCURRENCE**

2 I, Brittany N. DeJong, am the ECF User whose ID and password are being used to file this
3 document. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that each of the signatories
4 identified above has concurred in this filing.

5 Dated: May 17, 2021

6 /s/ *Brittany N. DeJong*

7 BRITTANY N. DEJONG

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